

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0123
State Gross Retail Tax
For the Years 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Gross Retail Tax – Taxpayer's Architectural Renderings.

Authority: IC 6-2.5-1-1; 45 IAC 2.2-4-1; 45 IAC 2.2-4-2; 45 IAC 2.2-4-2(a)(1); 45 IAC 2.2-4-2(a)(2); 45 IAC 2.2-4-2(a)(3); 45 IAC 2.2-4-2(a)(4).

Taxpayer argues that agreements to provide architectural renderings to its clients are transactions involving the provision of professional services. Therefore, the transactions are not subject to the state's gross retail (sales) tax.

STATEMENT OF FACTS

Taxpayer is in the business of providing architectural renderings. Architectural renderings are elaborate drawings of buildings typically commissioned by architects, construction companies, or building owners. Taxpayer uses either a set of blueprints or photographs as the basis for the rendering. Occasionally, taxpayer will make an on-site visit to the source building. The rendering may be prepared using pencil, pen and ink, watercolors, or combinations of those media.

During an examination of taxpayer's financial records, the audit found that taxpayer was selling these architectural renderings to Indiana customers without charging sales tax. The audit determined that the provision of the architectural renderings constituted a "unitary transaction" and that the taxpayer should have been collecting sales tax on each transaction. Accordingly, the audit assessed taxpayer for the uncollected sales tax.

The taxpayer protested the audit's determination and assessment, an administrative hearing was held, and this Letter of Findings follows.

DISCUSSION

I. Gross Retail Tax – Taxpayer's Architectural Renderings.

The audit found that taxpayer's provision of architectural renderings was a "unitary transaction" under 45 IAC 2.2-4-1. The regulation states as follow:

(a) Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a “retail merchant.”

(b) All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:

(1) The price arrived at between purchaser and seller.

(2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to the transfer of such property at retail.

The regulation derives from IC 6-2.5-1-1 which states that a “unitary transaction” includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.” A “retail unitary transaction” occurs when a retail merchant purchases tangible personal property in his ordinary course of business and then sells that property along with services as a unitary transaction. IC 6-2.5-1-2.

Taxpayer disagrees with the audit’s analysis arguing that taxpayer is not a “retail merchant” but is a service provider under 45 IAC 2.2-4-2 and is therefore entitled to the exemption provided under that regulation. 45 IAC 2.2-4-2, allowing a sales tax exemption for service providers, states in part as follows:

(a) Professional services, personal services, and services in respect to property not owned by the person rendering such services, are not “transactions of a retail merchant constituting selling at retail”, and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfer tangible personal property for a consideration, this will constitute a transaction of a retail merchant selling at retail unless:

(1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;

(2) The tangible personal property purchased is used or consumed as a necessary incident to the service;

(3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and

(4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

In order to qualify for the sales tax exemption as a service provider, the taxpayer must meet each of the four individual requirements established within 45 IAC 2.2-4-2.

Taxpayer is in the business of providing professional services as distinguished from tangible personal property. What taxpayer's clients purchase is taxpayer's ability to apply pencil, pen, ink, and water colors to cardboard or canvas in such a way as to create a stylized, attractive, and hyper-realistic rendition of the client's building. If the client wanted to acquire a literal, graphical representation of its building, there would be no need to purchase taxpayer's services. Instead the client could rely on the original blueprints or photographs without having to purchase taxpayer's services.

In one sense, the client never actually acquires absolute "ownership" of the architectural rendering because, in all cases, taxpayer retains reproduction rights to the original rendering. If the client wishes to duplicate the architectural rendering in a brochure or advertisement, the client must separately bargain and pay for the right to do so. If the client wishes to obtain a duplicate copy of the original rendering, it must – by the terms of the parties' original agreement – obtain that second copy from taxpayer. However, it should be noted that, in transactions involving the provision of additional copies from the original architectural rendering, the taxpayer should be collecting sales tax. In furnishing those additional copies, the taxpayer is not longer functioning as a service provider but is acting as a "retail merchant" transferring tangible personal property in the form of a unitary transaction.

Because taxpayer is essentially in the business of providing a service to its clients, it meets the first requirement set out in 45 IAC 2.2-4-2(a)(1).

The various supplies purchased by taxpayer – cardboard, canvas, ink, paint, pens – are necessarily consumed in the production of the architectural renderings. The supplies cannot be retrieved, recycled, or reused in the production of a different architectural rendering. Therefore, the taxpayer meets the second requirement set out in 45 IAC 2.2-4-2(a)(2).

The taxpayer's 48 representative invoices presented at the time of the hearing indicate that taxpayer charges approximately \$100 to \$3,500 for each original architectural rendering. The price varies based upon the size of the rendering, the media employed, and the complexity of the rendering. Taxpayer estimates that the value of the tangible personal property consumed in the production of the rendering is approximately four to five percent of the actual charge for the rendering. Common sense would indicate that the cost of pen, ink, water colors, and cardboard represents a very small portion of the ultimate total cost of a rendering costing upwards of \$3,500. Therefore, the taxpayer meets the third requirement set out in 45 IAC 2.2-4-2(a)(3).

When taxpayer originally purchased the items of tangible personal property used to produce the architectural renderings, it paid sales tax on those purchases. This fact is attested to in the original audit report. Therefore, taxpayer meets the fourth requirement set out in 45 IAC 2.2-4-2(a)(4).

Taxpayer is primarily in the business of furnishing a service, consumes the acquired tangible personal property in providing the service, the value of the tangible personal property is less than

ten-percent of the cost of the service, and pays sales tax at the time it acquires the tangible personal property. Therefore, because taxpayer is not acting as a “retail merchant,” it falls outside the authority of 45 IAC 2.2-4-1 and taxpayer is entitled to claim the sales tax exemption provided under 45 IAC 2.2-4-2.

FINDING

Taxpayer’s protest is sustained.

DK/JM/MR - 020606